

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EDWARD CRIST,

Petitioner,

v.

EMELIO RICOLCOL, et al.,

Respondent.

Case No. 2:24-02111 RGK (ADS)

MEMORANDUM AND ORDER  
DISMISSING PETITION

**I. INTRODUCTION**

Before the Court is a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition”) by Edward Crist (“Petitioner”), a prisoner in the custody of the Federal Bureau of Prisons in Victorville, California, proceeding pro se. (Dkt. No. 1.) Petitioner challenges the legality of his 2019 sentence after an unsuccessful motion to vacate under 28 U.S.C. § 2255 in the sentencing court. (*Id.*) As discussed below, the Petition must be dismissed for lack of jurisdiction, because it is a second or successive Section 2255 motion that does not qualify for Section 2255’s savings clause.

1       **II. BACKGROUND**

2           **A. Conviction and Prior Section 2255 Motion**

3           In 2019, Petitioner pled guilty to Hobbs Act Robbery in violation of 18 U.S.C.  
 4           § 1951 and felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)  
 5           and 924(a). See Crist v. United States, No. CR 16-4356 JCH (KBM), Dkt. 70 (D.N.M.  
 6           Apr. 16, 2019). The United States District Court for the District of New Mexico  
 7           sentenced Petitioner to 220 months imprisonment and entered judgment on the  
 8           conviction and sentence on October 11, 2019. Id. at Dkt. 77. On February 4, 2021,  
 9           Petitioner filed a motion to vacate his conviction under 28 U.S.C. § 2255, claiming in  
 10           part that his counsel was ineffective during plea proceedings and that he unknowingly  
 11           and involuntarily plead guilty to violating §§ 922(g) and 924(a). Id. at Dkt. 80; Crist v.  
 12           United States, No. CV 1:21-00098 JCH (KBM), Dkt. 6 (D.N.M. April 26, 2021). On  
 13           May 6, 2022, the District of New Mexico denied the Section 2255 motion as untimely,  
 14           finding the one-year limitation period expired on October 26, 2020, and Petitioner was  
 15           not entitled to equitable tolling. Crist, No. CR 16-4356, Dkt. 84.

16           **B. The Instant Section 2241 Petition**

17           Petitioner subsequently filed the present Section 2241 Petition,<sup>1</sup> asking this Court  
 18           to vacate his conviction and sentence and order his release from custody.<sup>2</sup> (Dkt. No. 1  
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20           <sup>1</sup> Petitioner also filed a Memorandum in support of his Petition. (Dkt. No. 3.)

21           <sup>2</sup> Petitioner also requests appointment of counsel. (Dkt. No. 1 at 5.) However, prisoners  
 22           who apply for habeas relief are not entitled to counsel. See Pennsylvania v. Finley, 481  
 23           U.S. 551, 555–56 (1987). Although the Court has discretion to appoint counsel in  
 24           appropriate cases, the Court generally limits exercising this discretion to exceptional  
 24           circumstances, e.g., where the Court finds it necessary to hold an evidentiary  
 24           hearing. See 18 U.S.C. § 3006A; 28 U.S.C. § 2254(h); Roe v. Coursey, 469 F. App'x 622,  
 24           624 (9th Cir. 2012); Knaubert v. Goldsmith, 791 F.2d 722, 728–30 (9th Cir. 1986). No  
 24           such circumstances exist here.

1 at 5.) Petitioner claims ineffective assistance of counsel under the Sixth Amendment,  
 2 alleging his attorney incorrectly advised him to plead guilty to violating 18 U.S.C.  
 3 § 924(e) without factual support.<sup>3</sup> (*Id.* at 3.) Petitioner argues his prior convictions in  
 4 2000 and 2010 (for drug trafficking, armed robbery, and robbery) do not qualify for  
 5 section 924(e)'s sentencing enhancement. (*Id.*; Dkt. No. 3 at 3–5.) Petitioner claims  
 6 further that, as a result of his counsel's ineffectiveness, he was denied Fifth Amendment  
 7 due process as he never received fair notice of the true nature of the charge against him.  
 8 (Dkt. Nos. 1 at 3, 3 at 5.) According to Petitioner, he should have only received a  
 9 guideline sentence of 92–115 months of imprisonment, not 220 months. (Dkt. Nos. 1  
 10 at 3, 3 at 6.)

### 11 **III. THE COURT LACKS JURISDICTION**

#### 12 **A. The Petition Challenges the Legality of Detention**

13 This Court lacks jurisdiction to review the Petition. “[I]n order to determine  
 14 whether jurisdiction is proper, a court must first determine whether a habeas petition is  
 15 filed pursuant to § 2241 or § 2255 before proceeding to any other issue.” *Hernandez v.*  
 16 *Campbell*, 204 F.3d 861, 865 (9th Cir. 2000). A petitioner challenging the manner,  
 17 location, or conditions of a sentence’s execution must file a petition for writ of habeas  
 18 corpus under Section 2241 in the district in which he is in custody. See *Harrison v.*

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19  
 20 As noted above, Petitioner plead guilty and was then convicted of violating 18 U.S.C. §  
 21 922(g). The sentencing enhancement under 18 U.S.C. § 924(e) “provides that a person  
 22 who violates § 922(g) and who ‘has three previous convictions’ for ‘a violent felony’  
 23 ‘committed on occasions different from one another’ shall be imprisoned for a minimum  
 24 of 15 years and a maximum of life.” *Johnson v. United States*, 559 U.S. 133, 136 (2010)  
 (quoting 18 U.S.C. § 924(e)). Petitioner takes issue with his counsel advising him to  
 enter the plea agreement, which identifies his four prior convictions and from which the  
 sentencing court imposed this sentencing enhancement. See *Crist*, No. CR 16-4356 JCH  
 (KBM), Dkt. 70 ¶ 16 (D.N.M. Apr. 16, 2019).

1     Ollison, 519 F.3d 952, 956 (9th Cir. 2008); Hernandez, 204 F.3d at 865 (“[A] habeas  
 2 petition filed pursuant to § 2241 must be heard in the custodial court . . .”). Section  
 3 2255 motions “provide[] the exclusive procedural mechanism by which a federal  
 4 prisoner may test the legality of detention” and must be heard by the sentencing court,  
 5 which in this case is the District of New Mexico. Lorensten v. Hood, 223 F.3d 950, 953  
 6 (9th Cir. 2000); Hernandez, 204 F.3d at 865.

7              Because Petitioner challenges the legality of his sentence here, the Petition must  
 8 be construed as a Section 2255 motion. (See Dkt. No. 1 at 3–5 (claiming “he is not guilty  
 9 of violating 18 U.S.C. § 924(e)” and requesting an order “vacating the judgment of  
 10 conviction and sentence”); Dkt. No. 3 at 2 (claiming conviction and sentence violates  
 11 Fifth and Sixth Amendments and seeking “relief from the judgment and sentence”)).  
 12 Petitioner essentially re-packages his prior Section 2255 motion as a Section 2241  
 13 petition. But he cannot avoid the restrictions of a Section 2255 motion simply by styling  
 14 it as a Section 2241 petition. See Stephens v. Herrera, 464 F.3d 895, 897 (9th  
 15 Cir. 2006).

16              **B.     Section 2255’s Savings Clause Does Not Apply**

17              To proceed in this Court, the custodial court, the Petition must qualify for Section  
 18 2255’s savings clause. Section 2255(e) permits a federal prisoner to file a Section 2241  
 19 petition to contest the legality of a sentence if his remedy under Section 2255 is  
 20 “inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e);  
 21 United States v. Pirro, 104 F.3d 297, 299 (9th Cir. 1997). This “savings clause”  
 22 exception is very narrow. See Jones v. Hendrix, 599 U.S. 465, 482 (2023) (explaining  
 23 savings clause does not “mean[] that § 2241 is available whenever a prisoner is presently  
 24 unable to file a § 2255 motion”). To show Section 2255’s remedy is inadequate or

1 ineffective, a petitioner must (1) make a claim of actual innocence, and (2) show that he  
2 has not had an unobstructed procedural shot at presenting that claim. Shephard v.  
3 Unknown Party, Warden, FCI Tucson, 5 F.4th 1075, 1076 (9th Cir. 2021).

4 The Petition fails both prongs. First, Petitioner does not claim actual innocence  
5 for purposes of qualifying to bring a section 2241 petition under the savings clause. To  
6 show actual innocence, Petitioner must demonstrate that, “in light of all the evidence, it  
7 is more likely than not that no reasonable juror would have convicted him.” Muth v.  
8 Fondren, 676 F.3d 815, 819 (9th Cir. 2012) (citation omitted). “[A]ctual innocence”  
9 means factual innocence, not mere legal insufficiency.” Id. (citation omitted).  
10 Petitioner claims he is innocent of violating 18 U.S.C. § 924(e) because his prior  
11 convictions do not qualify as serious drug offenses or violent felonies as defined by the  
12 statute and, thus, he should have received a guideline sentence of 92–115 months of  
13 imprisonment. (Dkt. No. 1 at 3–6.) But this purely legal claim has nothing to do with  
14 factual innocence. Petitioner is not claiming actual innocence of the crime of conviction,  
15 i.e., violating 18 U.S.C. §§ 922(g) and 924(a). See Marrero v. Ives, 682 F.3d 1190, 1195  
16 (9th Cir. 2012) (holding “purely legal argument that a petitioner was wrongly classified  
17 as a career offender under the Sentencing Guidelines is not cognizable as a claim of  
18 actual innocence” under savings clause). He “cannot assert a cognizable claim of actual  
19 innocence of a noncapital sentencing enhancement.” Id. at 1193. Thus, Petitioner fails  
20 to show actual innocence to qualify for the savings clause.

21 Second, Petitioner cannot demonstrate that he was denied an unobstructed  
22 procedural shot at presenting his claims. To determine whether Petitioner never had an  
23 unobstructed procedural shot to pursue his claim, the Court considers “(1) whether the  
24 legal basis for petitioner’s claim did not arise until after he had exhausted his direct

1 appeal and first § 2255 motion; and (2) whether the law changed in any way relevant to  
 2 petitioner’s claim after that first § 2255 motion.” Harrison, 519 F.3d at 960 (quotations  
 3 omitted); see also Jones v. Hendrix, 599 U.S. at 477–78 (holding § 2241 is not available  
 4 for collateral attacks on federal sentences based on intervening changes in statutory  
 5 interpretation because § 2255(h) only allows second and successive § 2255 motions that  
 6 rely on “newly discovered evidence” or “a new rule of constitutional law”).

7 Here, Petitioner relies on pre-2018 circuit precedent and Supreme Court  
 8 decisions from 2013, 1998, 1995, 1970, and 1941—well before the District of New Mexico  
 9 denied his Section 2255 motion in 2022. (Dkt. No. 3 at 5–11.) There is no indication  
 10 that the legal basis for his claims did not arise until after that denial. Petitioner relies on  
 11 no subsequent change in law or new rule of constitutional law, nor does he rely on any  
 12 newly discovered evidence. The mere fact that Petitioner’s prior Section 2255 motion  
 13 was unsuccessful does not make Section 2255’s remedy inadequate or ineffective to test  
 14 the legality of his conviction. See Lorentsen, 223 F.3d at 953 (explaining § 2255 not  
 15 inadequate or ineffective merely because court of appeals refuses to certify second or  
 16 successive motion to vacate); Moore v. Reno, 185 F.3d 1054, 1055 (9th Cir. 1999) (per  
 17 curiam) (rejecting contention that § 2255 is inadequate or ineffective merely because  
 18 prisoner’s § 2255 motion might be procedurally barred). Accordingly, the Petition does  
 19 not demonstrate that Petitioner was denied an unobstructed procedural shot at  
 20 presenting his claims. Therefore, the Petition does not qualify for the savings clause.

21 **C. Dismissal, Not Transfer, is Appropriate**

22 Transferring the Petition to the District of New Mexico is not in the interest of  
 23 justice because the Petition is a second and successive Section 2255 motion. See Cruz-  
 24 Aguilera v. INS, 245 F.3d 1070, 1074 (9th Cir. 2001). As a second and successive

1 Section 2255 motion, the Petition must first be certified by the court of appeals. See  
2 28 U.S.C. § 2255(h).

3 **IV. CONCLUSION**

4 This Court does not have jurisdiction over Petitioner's claims because they fall  
5 under Section 2255, not Section 2241. The instant Petition must be brought in the  
6 sentencing court in the District of New Mexico—and only then with the permission of  
7 the Tenth Circuit Court of Appeals.

8 IT IS THEREFORE ORDERED that the Petition is denied, and this action be  
9 dismissed for lack of jurisdiction.

10  
11 Dated: 5/14/2024

  
12 THE HONORABLE R. GARY KLAUSNER  
United States District Judge

13 Presented by:

14 /s/ Autumn D. Spaeth  
15 THE HONORABLE AUTUMN D. SPAETH  
United States Magistrate Judge